

1 JULIE CAVANAUGH-BILL (NV Bar No. 11533)  
2 Cavanaugh-Bill Law Offices, LLC  
3 Henderson Bank Building  
4 401 Railroad Street, Suite 307  
5 Elko, Nevada 89801  
6 Tel: (775)753-4357  
7 Email: Julie@cblawoffices.org

8 CLARE LAKEWOOD (CA Bar No. 298479), *pro hac vice*  
9 MICHAEL SAUL (CO Bar No. 30143), *pro hac vice*  
10 Center for Biological Diversity  
11 1212 Broadway, # 800  
12 Oakland, CA 94612  
13 Tel: (510) 844-7121  
14 Email: clakewood@biologicaldiversity.org

15 *Attorneys for Plaintiffs*  
16 *Center for Biological Diversity and Sierra Club*

17 **IN THE UNITED STATES DISTRICT COURT**  
18 **FOR THE DISTRICT OF NEVADA**

19 CENTER FOR BIOLOGICAL  
20 DIVERSITY, and SIERRA CLUB

21 Plaintiffs,

22 v.

23 U.S. BUREAU OF LAND  
24 MANAGEMENT; RYAN ZINKE, in his  
25 capacity as Secretary of the Department of  
26 the Interior; and BRIAN STEED, in his  
27 capacity as Acting Director of the Bureau of  
28 Land Management,

Defendants.

Case No. 3:17-cv-00553-LRH-WGC

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION TO EXTEND THE TIME FOR  
PLAINTIFFS TO CHALLENGE THE  
CONTENT AND SCOPE OF THE  
ADMINISTRATIVE RECORD;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

## **NOTICE OF MOTION**

Plaintiffs Center for Biological Diversity, et al. will and hereby do move for an order extending the deadline for Plaintiffs to file a motion challenging the content and scope of the administrative record. This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the declaration of Clare Lakewood, all pleadings and papers filed in this action, and such oral and documentary evidence as may be presented at the hearing on this matter. For the foregoing reasons, Plaintiffs respectfully request that the Court order that their deadline to file a motion challenging the content and scope of the administrative record be extended to May 24, 2018.

DATED: April 27, 2018

/s/ Clare Lakewood

CLARE LAKEWOOD (CA Bar No. 298479),  
*pro hac vice*  
MICHAEL SAUL (CO Bar No. 30143),  
*pro hac vice*  
Center for Biological Diversity  
1212 Broadway, Suite 800  
Oakland, CA 94612  
Phone: (510) 844-7121  
Facsimile: (510) 844-7150  
Email: [clakewood@biologicaldiversity.org](mailto:clakewood@biologicaldiversity.org)

*Attorneys for Plaintiffs*

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## INTRODUCTION

Plaintiffs Center for Biological Diversity and Sierra Club (“Plaintiffs”) respectfully request that this Court extend by two weeks the deadline for challenging the content and scope of the administrative record, set out in paragraph 2 of the Revised Joint Case Management Statement filed March 30, 2018 (ECF No. 23, p. 3). Plaintiffs’ current deadline for challenging the record is April 27, 2018 and they request an extension until May 24, 2018.

Under the Administrative Procedure Act, “the court shall review the whole record or those parts of it cited by a party.” 5 U.S.C. § 706. “[T]he whole record is not necessarily those documents that the agency has compiled and submitted as ‘the’ administrative record, [but, rather,] the court must look to all the evidence that was before the decisionmaking body.” *Public Power Council v. Johnson*, 674 F.2d 791, 794 (9th Cir. 1982) *See also Env'tl. Defense Fund v. Blum*, 458 F. Supp. 650, 661 (D.D.C. 1978) (improper “to exclude from consideration pertinent material submitted as an integral part of the rulemaking process or otherwise located in EPA’s own files” even if agency did not rely on it).

Defendants lodged an administrative record with the Court on April 13, 2018. A large number of documents forming part of the record in this case were not included in that administrative record. The omitted documents were various scientific studies, reports, white papers, newspaper articles and other documents cited in comment letters and protests Plaintiffs provided to Defendants. Ex. A, Declr. of C. Lakewood (Apr. 27, 2018). Defendants have agreed that any documents provided by Plaintiffs to Defendants before the decisions challenged in this case properly form part of the record, and have agreed to lodge a supplement with the Court.

Unfortunately, despite extensive conferral by telephone and by e-mail, parties have been unable to agree on a further revision to the Revised Joint Case Management Statement to preserve Plaintiffs' right to challenge the content and scope of the administrative record after the supplement is lodged. The current Revised Joint Case Management Statement provides Plaintiffs with two weeks from the lodgment of the administrative record to review and prepare any challenge to the administrative record.

On the understanding that Defendants intend to lodge the supplement by May 9, Plaintiffs seek an extension of the deadline for challenging the content and scope of the administrative record or notice that Plaintiffs do not challenge the content and scope of the administrative record, of two weeks from May 9, 2018, being May 23, 2018.

The two-week extension mirrors the two-week period parties agreed for Plaintiff to challenge the record under the current Revised Case Management Statement. It will ensure that Plaintiffs have sufficient time to review the record in its entirety, and preserves their right to complete or supplement the record. This in turn ensures that this Court has before it all materials that were before the decisionmaker when it made its decisions, and that Plaintiff can fully argue its case by reference to those materials; while aiding the parties to resolve outstanding issues with the administrative record without further orders from the court. The two-week extension requested will not delay resolution of the matter, as the briefing schedules set out in the Revised Case Management Statement otherwise remains unaltered.

Counsel for Defendants has indicated that Defendants does not oppose Plaintiffs' motion to extend the time for Plaintiffs to challenge the record only if:

- i) Plaintiffs extension of time is only until May 16, 2018; and
- ii) The subject matter of any challenge is limited only to a failure by BLM to include in the supplement the documents provided by Plaintiffs to BLM and identified by Plaintiffs in the spreadsheet it provided on May 26, 2018.

DATED: April 27, 2018

Respectfully submitted,

## IT IS SO ORDERED

Dated: April 30, 2018

William J. Cobb

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**UNITED STATES MAGISTRATE JUDGE**

/s/ Clare Lakewood

CLARE LAKEWOOD (CA Bar No. 298479),  
*pro hac vice*

1 MICHAEL SAUL (CO Bar No. 30143),  
2 *pro hac vice*  
3 Center for Biological Diversity  
4 1212 Broadway, Suite 800  
5 Oakland, CA 94612  
6 Phone: (510) 844-7121  
7 Facsimile: (510) 844-7150  
8 Email: clakewood@biologicaldiversity.org

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PLAINTIFFS' MOTION TO EXTEND TIME TO CHALLENGE THE RECORD

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## **CERTIFICATE OF SERVICE**

I certify that on April 27, 2018, I filed the foregoing Motion for an Extension of Time to Challenge the Administrative Record and Memorandum of Points and Authorities Thereof on behalf of Plaintiffs Center for Biological Diversity and Sierra Club via the CM/ECF system which will provide electronic service to all counsel of record.

DATED: April 27, 2018

/s/ Clare Lakewood

CLARE LAKEWOOD  
*Attorney for Plaintiffs*